

APPEAL NO. 010232

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 16, 2001. With respect to the single issue before him on appeal, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 13th quarter. In her appeal, the claimant argues that the hearing officer's determinations that she had some ability to work in the qualifying period for the 13th quarter, that she did not make a good faith effort to look for work in the qualifying period, and that she is not entitled to SIBs for the 13th quarter are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. The carrier did not appeal the hearing officer's determination that the claimant's unemployment in the qualifying period was a direct result of her impairment.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the 13th quarter, which ran from October 15, 2000, to January 13, 2001. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee "has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work." The hearing officer determined that while the narrative reports from the claimant's surgeon explained how her injury caused a total inability to work, there was another record that showed an ability to work. The hearing officer was acting within his province as the fact finder under Section 410.165(a) in determining that the report from the doctor who examined the claimant on behalf of the carrier showed an ability to work. Nothing in our review of the record demonstrates that the hearing officer's determination that the claimant had some ability to work in the qualifying period for the 13th quarter is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. As such, we will not disturb that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). In her appeal, the claimant contends that she looked at the classified advertisements in the newspaper every day during the qualifying period; however, at the hearing, the claimant stipulated that she did not look for work in the qualifying period. As such, the hearing officer did not err in determining that the claimant is not entitled to SIBs for the 13th quarter because she did not make a good faith effort to look for work commensurate with her ability to work.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge